IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 177 of 1983

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M. DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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SURAT MUNICIPAL CORPORATION - Appellant(s)

Versus

SURAT JILLA SAHAKARI DUDH UTPADAK MANDLI LTD - Defendant(s)

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Appearance :
MR PRASHANT G DESAI for Appellant(s) : 1,
MS KJ BRAHMBHATT for VASUBEN P SHAH for Defendant(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M. DOSHIT
2nd August, 2007

ORAL JUDGMENT

This Appeal, preferred under Section 100 CPC by the defendant in Regular Civil Suit No. 818 of 1979,

arises from the judgment and order dated 6th January, 1983 passed by the learned Joint Civil Judge [JD], Surat in Regular Civil Appeal No. 153 of 1981. The Appeal is admitted on following substantial questions of law :-

[1] Whether appellate court is right in holding that in the case of the plaintiff the amount in dispute paid by the plaintiff was not octroi by merely a deposit.

[2] Whether appellate court has erred in holding that sec.487 of B.P.M.C. Act would not be attracted in the instant case.

The respondent-plaintiff Surat Jilla Sahakari Dudh Utpadak Mandli Limited, a Cooperative Society registered as such, instituted Regular Civil Suit No. 818 of 1979 in the Court of learned Civil Judge [JD], Surat against the Surat Municipal Corporation, the appellant herein. According to the plaintiff, the plaintiff had, on 2nd December, 1978, imported two machines from Poona. One of the said machines was immediately exported to Baroda. While bringing in the said machine, the plaintiff had deposited a sum of Rs.8,383/=. On export of the said machine, the plaintiff was entitled to a refund of the said deposit of Rs.8,383/=. The plaintiff applied for refund of the said amount on 23rd January, 1979. The claim of the plaintiff was rejected by the defendant-

Corporation as time-barred. Feeling aggrieved, the plaintiff instituted the above Civil Suit for recovery of the said sum of Rs. 8,383/= with interest thereon. The suit was contested by the defendant by filing written statement Exh.11. According to the defendant, the claim for refund was not made by the plaintiff within statutory period of thirty days, the plaintiff, therefore, was not entitled to refund of the said amount. The defendant also questioned the maintainability of the suit. According to the defendant, the suit was time-barred and was not maintainable. The learned Civil Judge by his judgment and order dated 31st March, 1981 held that the suit notice given by the plaintiff was not legal and valid and that the suit was barred by Section 487 of the Bombay Provincial Municipal Corporation Act, 1949 [hereinafter referred to as, "***the Act***"]. The learned Civil Judge accordingly decreed the suit in favour of the defendant. Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No. 153 of 1981. The Appeal was heard by the learned Joint Judge, Surat.

The lower appellate court was pleased to hold that the sum of Rs. 8,383/= paid by the plaintiff was

a deposit and not the amount of octroi. The claim for refund made after a period of thirty days, therefore, cannot be said to be time-barred. Besides, the lower appellate court was pleased to hold that Section 487 of the Act was not attracted. The lower appellate Court accordingly allowed the appeal and decreed the suit in favour of the plaintiff.

Mr. Desai has appeared for the appellant-Municipal Corporation. He has assailed the judgment of the lower appellate Court in so far as the lower appellate Court has held that the sum of Rs. 8,383/= paid by the plaintiff was not the amount of octroi but a deposit, not governed by the Regulations made by the Municipal Corporation. He has also assailed the finding recorded by the lower appellate Court that Section 487 of the Act shall not be attracted. He has relied upon Section 487 of the Act and the judgments in the matters of ***Transport Manager, Poona Municipal Transport & Undertaking v. Maharashtra State Road Transport Corporation*** [1967 BLR 869] and of ***Baroda Municipal Corporation v. Patel Dahyabhai Gordhanbhai & Ors.*** [1985 [1] GLR 113].

Section 487 of the Act specifically bars a suit,

inter alia, against the Corporation in respect of any alleged negligence or default in execution of the Act, until the expiration of one month next after notice in writing has been left at the Chief Municipal Office and unless it is commenced *within* six months next after the accrual of the cause of action.

In the present case, admittedly, the claim for refund was not made within the statutory period of thirty days and the Civil suit was not instituted within six months from the date of the accrual of the cause of action. It cannot be gainsaid that the sum of Rs.8,383/= paid by the plaintiff was against the octroi for the machine in question. On export of the said machine out of the limits of the Corporation, the plaintiff was entitled to refund of the said amount. It is not disputed that under the relevant rules, such refund ought to have been claimed within thirty days from the date of the export of the goods. Besides, even if it is assumed that the Corporation had wrongly rejected the claim for refund of the said amount, such an act ought to have been challenged within six months from the date of the refusal. In my

opinion, the lower appellate court has erred in holding that on the facts of the present case, Section 487 of the Act would not be attracted.

In the matter of ***Transport Manager, Poona Municipal Transport & Undertaking*** [*Supra*], the Hight Court of Bombay was pleased to hold that, "***...Where a Municipal Corporation governed by the Bombay Provincial Municipal Corporations Act, 1949, runs a public transport undertaking in accordance with and in the manner authorized by the provisions of the Act, the drivers running the vehicles do so in pursuance of the provisions of the Act and the act of driving is in execution of the corporation's duties to run the transport undertaking. Therefore, where the cause of action is that the driver of a vehicle of such a transport undertaking drove the same negligently, the provisions of s. 487 of the Act will be attracted.***" In the matter of ***Baroda Municipal Corporation*** [*Supra*], this Court considering the scope and ambit of Section 487 of the Act held that, "***...persons who are dissatisfied with the action of the municipality have to challenge the same within reasonable time of six months and, therefore,***

legislature has provided for a shorter period in respect of the acts of the municipal servants which have been done in pursuance of the provisions of the Act."

In the above view of the matter, I hold that the lower appellate Court has materially erred in holding that the suit amount deposited by the plaintiff was not the amount of octroi but a mere deposit, and in holding that on the facts of the case Section 487 of the Act was not attracted.

The present Appeal is accordingly allowed with cost. The *impugned* judgment and order dated 6th January, 1983 passed by the learned Joint Judge, Surat in Regular Civil Appeal No. 153 of 1981 is *quashed* and set-aside. The judgment and decree dated 31st March, 1981 passed by the learned Civil Judge [JD], Surat in Regular Civil Suit No. 818 of 1979 is restored. Decree be drawn accordingly.

{Ms. R.M Doshit, J.}

*Prakash**